Filed 12/1/16 In re I.K. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re I.K., a Person Coming Under the Juvenile Court Law.	
STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Plaintiff and Respondent, v. O.T., Defendant and Appellant.	F072977 (Super. Ct. No. 517347) **OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q. Ameral, Judge.

Carolyn S. Hurley, under appointment by the Court of Appeal, for Defendant and Appellant.

John P. Doering, County Counsel, and Robin Gozzo, Deputy County Counsel, for Plaintiff and Respondent.

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O.T. (mother) and Robert K. (father) agreed to place their daughter, I.K., in guardianship with Rosa A.[1] I.K. subsequently became a dependent of the juvenile court when Rosa could not care for her due to Rosa's substance abuse issues. Mother now contests the juvenile court's order denying her placement of, and reunification services with, I.K. Mother also contends her request to terminate the guardianship was denied in error. We affirm.

STATEMENT OF THE CASE AND FACTS

Voluntary Maintenance Services

In February of 2014, mother and father were referred to the Stanislaus Community Services Agency (agency) after mother was admitted to the hospital for pneumonia and the H1N1 flu. At the hospital, father was reported to be cussing at mother while holding their child, I.K., then two months old. Father was suspected of being on drugs due to his erratic behavior. Father called mother names and directed her to leave the hospital against medical advice. Mother verbalized that father could not care for I.K.

On February 19, 2014, a social worker met with father, who reported he was on parole and was a Penal Code section 290 sex offender registrant. He was diagnosed with bipolar disorder and schizophrenia with seizures and was receiving mental health services. Father admitted methamphetamine use, but stated the only thing he had taken in the last four weeks was Norco, which he was given for pain from cracked ribs he received when he resisted arrest during a domestic violence altercation with mother. Father took a drug test, which was negative.

A few days later, after meeting with a social worker at the bus terminal because they were without housing, mother and father agreed to voluntary maintenance services. They reported they were going to search for bed space that night at the Mission, a homeless shelter.

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[1]Neither father nor Rosa are a party to this appeal.

On February 27, 2014, father tested positive for opiates and barbiturates. He reported taking pain medication for stitches in his head received as a result of a fight. Mother and father were receiving emergency housing and were provided baby supplies. A public health nurse (PHN) was subsequently assigned to monitor I.K. and assist mother and father. Father was provided referrals for a substance abuse assessment. Both were provided bus passes. Mother attempted to encourage father to calm down and cooperate with the services. She said she would take I.K. and leave if he refused.

On March 4, 2014, mother and father updated the social worker with a new motel address and reported they had taken I.K. to the hospital, where she was diagnosed with a virus.

A few days later, the PHN visited the family in their motel room. The PHN found I.K. to be below the growth curve and instructed mother and father to feed her more often. Father had a black eye he said he received when he was "jumped" a few days earlier. The PHN provided mother and father parenting materials, including a DVD set, books, and personal instruction.

The social worker visited the family in the motel room the following day and suggested a parenting class for both mother and father. Mother said she would benefit from such a class, but father stated he was too busy. Because their time in the motel was limited, they were referred for low income housing assistance and offered a county driver for medical appointments.

At the end of March 2014, mother and father reported that, since they were homeless, they used a friend, Rosa, to watch I.K. at night as they were still searching for housing. At the beginning of April, mother and father were found to have adequate diapers, formula and clothing for I.K., who was well-kempt and smiled at her parents. Father had still not attended a substance abuse assessment, and father asked what would happen if he refused to do the assessment. Mother stated she did not think father needed drug treatment. Mother and father were told that, if they failed to cooperate with the

voluntary service plan, their case would be reassessed by an emergency response social worker. Attempts to reach Rosa for a home visit were unsuccessful.

By the end of April 2014, mother and father explained they were staying at the Mission without I.K. because she had a runny nose and cough. The PHN and social worker had concerns about mother and father allowing I.K. to stay with Rosa, whom they had met at the bus station,[2] and the possible lack of bonding between mother and I.K. because they were not together. They were also concerned that mother was limiting her housing options by staying with father, who was a sex offender registrant.

At the beginning of May 2014, mother and father stated they wished I.K. to stay with Rosa under a temporary guardianship and had signed a notarized statement to that effect. The social worker informed mother and father that this statement was not actually a guardianship and was not binding. If they wished Rosa to have guardianship, they would need to go through superior court and fill out the guardianship paperwork. The distinction between temporary and permanent guardianship was explained to them, and they said they wished Rosa to have temporary guardianship. Mother and father were encouraged to think over their choice and to bring Rosa with them to the agency to discuss options. Both mother and father were consistently participating in parenting classes. Father had yet to complete his substance abuse assessment, but said he would do so in May.

In June of 2014, it was reported that mother and father were staying in a motel and had I.K. during the day, but had her stay with Rosa at night. Mother and father were working on finding a permanent residence so that they could have I.K. back full time. They no longer wished Rosa to have temporary guardianship. Later in the month, the social worker informed father he would need to complete his parenting classes at a different location because he was a sex offender registrant and there were children onsite.

[2]Rosa later explained she met mother and father at the bus station where she worked.

Father became irate. It was also reported that mother was less patient with I.K. and that she had a temper.

Rosa reported that father had said I.K. was crying so much, he wanted to give her a "psych pill to shut her up" A suspected child abuse report was made and investigated, causing father to become angry at Rosa. Mother reported that I.K. gets upset when she and father argue. Mother and father agreed to call Rosa to come get I.K. if they begin to argue. They were both referred for anger management classes and mother for domestic violence classes.

By the beginning of August 2014, mother and father were again in a motel. Both completed parenting classes, and both agreed to cooperate with the rest of the services. When the social worker visited, I.K. was with mother and father and appeared comfortable around them. She was in good health and within normal development limits.

In mid-August 2014, mother was third on the waiting list for an apartment, but father could not stay with her due to his sex offender registrant status. While both wished Rosa to continue providing child care, she was no longer able to do so as she lost her job and was struggling financially. Mother and father were referred to county child care for I.K. Mother stated she would begin the women's support group and father said he would begin an anger management support group the following week.

By the end of September 2014, I.K. was again staying with Rosa. When the social worker visited mother and father, they voiced frustration that they were still homeless, although mother was on a waiting list for low-income housing. Father was now scheduled to begin anger management classes in October.

In the middle of October 2014, Rosa called child protective services to report that father had been drinking and elbowed mother when they came by to pick up I.K. Both mother and father denied these concerns. Mother and father then took I.K. from Rosa, although they were still homeless and staying with a friend, Anthony.

By December 2, 2014, mother had low-income housing, but decided not to stay because the housing was far from services, father could not stay with her due to his sex offender registrant status, and she needed his help with I.K.'s care. She decided to move back into a motel with father and again use Rosa for child care.

In January of 2015, the social worker met with mother and father at Rosa's home and all agreed guardianship would be best for I.K. as mother and father were homeless and father was on parole. The social worker spoke to mother privately about a telephone call from mother in early December in which the social worker overheard mother ask father if he was going to hurt her and then screamed, but mother denied father hurt her.

By the end of January of 2015, Rosa would not allow mother and father to visit I.K. because father was on drugs. Agency staff overheard father state he was going to break I.K.'s legs and injure mother. Mother threatened to blow up Rosa's house or have somebody else do it because Rosa would not allow them to visit I.K. Mother was no longer amendable to the idea of guardianship; father stated he would cooperate.

Guardianship

On February 4, 2015, both mother and father agreed to guardianship of I.K. with Rosa and signed the paperwork, which was filed with the superior court. A temporary guardianship was ordered. Several days later, mother met with the social worker and agreed I.K. was better off with Rosa under guardianship until she could obtain safe and suitable housing and begin attending a domestic violence support group. Mother hoped to later appear before the court and "prove that she [could] justify having the Guardianship set aside."

On February 23, 2015, Rosa gave the social worker the temporary guardianship orders. Rosa reported receiving threatening texts from mother requesting visitation. That same month, mother was informed that, due to the temporary guardianship, the voluntary maintenance case would now be closed.

On June 26, 2015, the social worker reported that she received legal guardianship paperwork from the superior court and the next hearing would be July 6, 2015. Both mother and father had been present at previous court hearings, but were still "homeless and using." Both were told "2-3 times" by the superior court during guardianship proceedings that they would need to complete parenting classes, substance abuse classes, and provide to the court three consecutive clean hair follicle tests in order to have the guardianship set aside. Neither had completed any of the tasks.

At a July 7, 2015, home visit at Rosa's, I.K. was found walking, running, and smiling and appeared to be bonded to Rosa. Permanent guardianship was granted on July 15, 2015. Parents were allowed supervised visits, at their expense. As stated in the social worker's summary for that date:

> "This was an L[egal] G[uardianship] case from Superior court. The parents are homeless and continue to use drugs. They asked someone they hardly knew to watch I[.K.] and basically left her with Rosa afterwards. I[.K.] has been with Rosa since April 2014. GN [general neglect] is substantiated. Rosa is protective. No further issues at this time."

Detention

A month and a half later on August 27, 2015, I.K. was detained from Rosa after Rosa checked herself into a hospital for drug abuse. Rosa said she started abusing methamphetamine a few months earlier, had been evicted from her home, and could no longer care for I.K.

Mother was located that same day but reported she did not have stable housing, would be in a motel until the following day and then be out on the street until she got more money. Mother denied drug use and denied that either she or father ever abused or neglected I.K. Mother explained she has scoliosis and when I.K. was younger, she was limited in mobility in being able to pick her up. Mother stated both her current boyfriend, Troy, and father are sex offender registrants.

Father was located the following day. He admitted he is a registered sex offender and he was homeless. He denied current drug use or mental health issues, but admitted prior methamphetamine use.

Mother's drug test was negative but with "faint" lines of methamphetamines and THC. Mother admitted being around drug users, but denied any personal use. Mother's boyfriend Troy tested positive for THC and had faint lines for methamphetamine and benzodiazepines. He admitted smoking marijuana and snorting methamphetamine six days prior.

A Welfare and Institutions Code section 300[3] petition was filed, alleging Rosa had become addicted to methamphetamines and could no longer care for I.K. The petition had further allegations regarding mother's current living situation and circumstances, as well as father's substance abuse, mental health and criminal issues, stating neither could care for I.K.

At the detention hearing September 1, 2015, mother, father and Rosa were all present and counsel appointed for each. I.K. was ordered detained and a combined jurisdiction/disposition hearing set for October 1, 2015.

Jurisdiction/Disposition

The report prepared in anticipation of the jurisdiction/disposition hearing recommended reunification services be granted Rosa and denied mother and father.

The report stated that, while Rosa initially reported she had been using methamphetamines for a "few months," it was learned in September that she had been using methamphetamines for eight months and had been abusing prescription pain pills for two years. Rosa entered an inpatient treatment program on September 8, 2015. The report noted Rosa had been I.K.'s primary caretaker since she was approximately five months old.

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[3]All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

The report went into detail about mother's background, including that mother was taken from her parents at two weeks due to possible fetal alcohol syndrome and their drug use. She was in foster homes until age eight, and then group homes until age 18. She took medication for depression as a teenager, but stopped when she turned 18. Mother had never worked and she receives SSI for severe scoliosis and diminished lung capacity. Mother was married to father in April of 2015, but was not sure the proper paperwork was completed. In any event, they broke up three days later because he began drinking and mistreating her. Mother met her current boyfriend, Troy, five months earlier through father and had been dating him since. She had no support system other than Troy.

The social worker opined it would be detrimental to place I.K. with either parent. The report stated mother and father had already received 12 months of family maintenance services, but their situation stayed the same. There was no evidence either made any effort to address their issues after services were ended when temporary guardianship was first granted. Nor had they followed through on any of the conditions set out by superior court to set aside the guardianship.

Rosa submitted a statement to the juvenile court stating she had three children: a 21-year-old son, who is a senior at San Diego State University; a 19-year-old son in the Army; and a 17-year-old daughter, who is a high school senior. Rosa was evicted from her home shortly after obtaining guardianship of I.K., and, although "lost in [her] addiction," she, her daughter, and I.K. had a place to stay at Rosa's parents until she asked for help from child protective services.

On November 12, 2015, mother's counsel filed a motion to terminate guardianship on a simple "Motion for Order" form, without points and authorities. The juvenile court denied the motion without prejudice, stating, "Simple motion is not the correct procedure for a W&I 728 motion. Court also questions whether mother may bring such a motion."

On November 13, 2015, the agency filed an addendum report stating Rosa had completed residential treatment at Nirvana and transitioned to Redwood, while still participating in day treatment at Nirvana. She had completed only one counseling session at Sierra Vista due to scheduling conflicts, but had another upcoming appointment.

The addendum report stated mother had completed four parenting groups and had an upcoming counseling appointment. Father had not begun any services. I.K.'s visit with Rosa and with mother went well; visits between I.K. and father were not as positive as she was not voluntarily willing to interact with him.

There was concern about Rosa's relationship with her current partner, Monique, as it was believed Monique had an addiction to prescription pain medication. And there was concern that mother still had contact with father through mutual friends and through Troy.

At the contested jurisdiction/disposition hearing November 19, 2015, mother's counsel stated he wished to "place something on the record," and indicated he attempted to file a "petition for termination of guardianship using the GC255 form, as well as the GC260 form," [4] but the clerk's office would not file the form, stating it was not the proper form and he should use the "simple form" to file the motion. But, as he explained, when he did file the simple form, the juvenile court denied the motion. The juvenile court interjected that the motion was denied without prejudice. Counsel stated he understood, and

> "the reason why I'm bringing this up and not making a big complaint about it, if I had filed it, I think right now I would be withdrawing the motion anyways. Partially because it is not going to affect the way that I'm going to proceed at hearing today. I do plan—depending on how this works out

[4] A GC-255 is the California Judicial Council "Petition for Termination of Guardianship" form; GC-260 is the California Judicial Council "Order Terminating Guardianship" form. Both are used to terminate probate guardianships.

today, I may file it again in the future, but I did want the Court to be aware of that problem I had."

The juvenile court noted it still believed the simple motion form was not the appropriate form for a motion under section 728, but that it was not the prerogative of the clerk's office to reject counsel's attempts to file the GC-255 and GC-260 forms. The juvenile court stated it also still had concerns about whether a parent has standing to file a section 728 motion, "[b]ut that could be addressed at a later day."

The contested jurisdiction/disposition hearing then proceeded. The agency, I.K., and Rosa all submitted on the reports. Mother was called as a witness on her own behalf. She denied ever using drugs. She testified that she had a family maintenance case for about a year and, during that time, she had legal custody of I.K. and took care of her "[f]or the most part."

Mother denied an allegation that at one point she tried to suffocate I.K. with a pillow. Mother also rejected the allegation that father intentionally burned I.K. by placing her in scalding water, explaining that, while mother was in the hospital, he had called her and told her that he went to bathe I.K. and the water was too hot. Mother did not think he did so purposefully.

Mother thought she met Rosa when I.K. was three or four months old and that Rosa started caring for her when she was six or seven months old, taking I.K. for a few days at a time. This occurred because mother and father "weren't stable," they were homeless, and Rosa was able to help.

Mother completed a parenting class, but admitted she never enrolled in a domestic violence class. While she testified she was going to, she "got scared and backed out." At the time of the current hearing, she "just barely" started domestic violence counseling; she had had one session.

Mother admitted consenting to the guardianship, claiming she did so because it was the right thing to do, but also because the social worker "kind of pushed [her] into it"

by stating it was a good idea. By the time she consented to guardianship, I.K. was living with Rosa "pretty much" full time.

Mother testified that, after guardianship began, she began having concerns because of "little stuff" that happened, such as the time she visited I.K. at Rosa's and I.K. was in the bathroom eating a bar of soap. Mother did not say anything about the incident. Mother testified she wanted I.K. back, but did not know if she was able to do so "today."

Mother was currently living with "different friends" and did not recall getting any help from the agency with housing referrals. She was in a relationship with Troy, a sex offender registrant, but claimed she would be able to keep I.K. away from him if ordered by the court. She thought parenting, domestic violence counseling, and housing assistance would be helpful.

When the hearing continued on December 8, 2015, mother resumed her testimony and said that if I.K. were returned to her, she would take her to the homeless shelter. While she acknowledged that she previously did not think the homeless shelter was suitable for I.K., as evidenced by the fact that she earlier allowed Rosa to care for her when she and father had to stay in the homeless shelter, she now thought it was okay because "it wouldn't be a permanent thing." Mother testified she would separate from Troy if I.K. was returned to her, although she was still currently in a relationship with him.

Mother testified she allowed I.K. to stay with Rosa because she and father had "issues" and it was not safe for I.K. to be with them. Mother mentioned the domestic violence between mother and father, as well as father's mental health, anger issues, and drug use. While she was aware of all of this, she had wanted the relationship between the two of them to work, but did not know why she finally left him. Mother had heard of father's threat to break I.K.'s legs, but did not believe he intended to hurt her.

Mother testified that she had housing for herself and I.K. in December of 2014, but father could not stay there with them due to his sex offender registrant status. She

decided to leave that housing so that father could help care for I.K., so she went back to living in a motel. Mother acknowledged that, even when she did have housing, I.K. was not in her care full time.

Mother acknowledged that I.K. appeared to be bonded to Rosa, and she agreed to the guardianship because she thought it was best for I.K. due to her own instability, homelessness, and inability to care for her. When asked what was different now, mother replied, "Not a lot. I mean, my situation is still kind of the same," but claimed she was taking things "a lot more serious" now. She also testified that she agreed to the guardianship in part because her social worker made it sound like I.K. would be taken from her if she did not agree to it.

According to mother, there were some "red flags" while I.K. was in Rosa's care. For instance, Rosa would be up all night and her house was "packed" with stuff when I.K. was starting to crawl. Mother did not say or do anything about these situations.

The agency made an offer of proof that Rosa "transitioned" to Redwoods, but was extended in her Nirvana intensive treatment outpatient program because she was found to be associating with an individual who was deemed unhealthy to her recovery. The offer of proof was accepted.

In closing, the agency argued it did not want the guardianship set aside because Rosa was the person I.K. was most bonded with and Rosa should be offered reunification services. The agency also believed, citing *In re B.L.*(2012) 204 Cal.App.4th 1111 (*B.L.*), that the juvenile court had no authority to offer services to mother or father.

Counsel for I.K. agreed that Rosa was entitled to services, but would not object to mother getting services as well in case the guardianship fell through.

Rosa's counsel submitted on the issue of jurisdiction. As for disposition, counsel requested reunification services.

Mother's counsel asked that jurisdiction not be sustained, due to misrepresentations made by Rosa about mother and father's lack of care of I.K. and about

her own drug use. Counsel argued *B.L.* was inapplicable due to the distinction between a "legal guardianship" and "probate guardianship," which was created in this case. He argued further that the probate guardianship was unenforceable because it was based on fraud and subject to the equitable defense of unclean hands. Counsel asked that mother be given custody or, in the alternative, be given reunification services.

Following argument, the juvenile court struck several allegations in the petition, amended several others according to proof, and then sustained the petition. The juvenile court declined to place I.K. with mother, finding it would be detrimental to her safety, protection, or physical or emotional well-being. In support of its finding, the juvenile court noted its concern that mother was involved with father and, when she ended that relationship, got involved with another sex offender registrant. The juvenile court was also concerned that mother ignored the "red flags" she expressed about Rosa's behavior, particularly that she was "up all night," when mother had had experience living with father, a methamphetamine user. The juvenile court also expressed concern that mother continued her relationship with father "when he presented a danger" to mother because of ongoing domestic violence, and she "never addressed those issues."

Reunification services were provided Rosa, but not mother and father because the juvenile court was not required to and might not "even have legal authority to do so."

DISCUSSION

Before we address mother's contentions, we set out some basic terminology on guardianships to assist in our discussion:

California law recognizes two types of guardianships pertaining to minor children governed by two separate statutory schemes. A guardianship can be established by the superior court, before the commencement of dependency proceedings, under the authority of the Probate Code. (Prob. Code, § 1514; *Guardianship of Zachary H.* (1999) 73 Cal.App.4th 51, 61.) Juvenile courts may also create guardianships under the authority of the Welfare and Institutions Code. (§ 366.4, subd. (a); *In re Heraclio A.* (1996) 42

Cal.App.4th 569, 575.) We refer to these two types of guardianships as "probate guardianships" and "dependency guardianships," respectively.

What is at issue here is a probate guardianship created before the commencement of a dependency proceeding, which is now at issue in a subsequent dependency proceeding involving the guardian.

I. FAILURE TO PLACE I.K. WITH MOTHER

Mother argues first that, as the section 361.2 nonoffending, noncustodial parent, the juvenile court erred when it failed to place I.K. with her after removing her from Rosa's custody. We disagree.

Applicable Law

A dependency court's acquisition of jurisdiction over a child is governed by section 300. In its jurisdictional order, the juvenile court found I.K. was described by section 300, subdivisions (b) and (g),

> "because at the time of the filing of the petition, [Rosa] reported that she wasn't able to provide care for I[.K.] because she was involved in her methamphetamine addiction and the child was removed from the care of the guardian, and the guardian, because of her addiction, was unable to provide for the proper care and needs of this very young child."

Section 361, subdivision (c)(1) authorizes the juvenile court to remove a child from "'the physical custody or his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated [if] the juvenile court finds clear and convincing evidence [that] … [¶] [t]here is or would be substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody….'" (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1420 (*Luke M.*), second italics omitted.)

Section 361.2, subdivision (a) governs placement of a child after the dependency court has acquired jurisdiction of a child. The section provides:

> "'When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.'" (*Luke M., supra,* 107 Cal.App.4th at p. 1420, italics omitted.)

"A court's ruling under section 361.2, subdivision (a) that a child should not be placed with a noncustodial, nonoffending[5] parent requires a finding of detriment by clear and convincing evidence. [Citation.] We review the record in the light most favorable to the court's order to determine whether there is substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the child[] would suffer such detriment. [Citations.] Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt. [Citation.]" (*Luke M., supra,* 107 Cal.App.4th at p. 1426.) "Substantial evidence is evidence that is reasonable, credible and of solid value, such that a reasonable trier of fact could make such findings." (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1507, citing *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.) The "appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence.… It is not an appellate court's function, in short, to redetermine the facts." (*In re Sheila B., supra,* at pp. 199-200.)

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[5]Section 361.2 does not include the word "nonoffending." "Nonetheless, '[i]n a few decisions, reviewing courts have used the phrase "nonoffending noncustodial parent" as shorthand for "a parent … with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of section 300."' [Citations.]" (*In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 299; see *Luke M., supra,* 107 Cal.App.4th at p. 1419 [using phrase "nonoffending, noncustodial parent"].)

"A detriment evaluation requires that the court weigh all relevant factors to determine if the child will suffer net harm." (*Luke M., supra,* 107 Cal.App.4th at p. 1425.) The juvenile court's inquiry focuses on the child's best interests. (*Ibid.*)

Analysis

The juvenile court found placing I.K. with mother would be detrimental to I.K. because mother had stayed with father, a sex offender registrant; she was currently dating another sex offender registrant; and she had failed to be more protective of I.K. when she saw signs of Rosa's drug use and did not do anything about it. Mother does not challenge the sufficiency of the evidence to support these findings, but argues that the findings do not support the finding of detriment. We disagree.

In making its determination, the juvenile court had before it evidence that mother, over an extended period of time, made poor and unsafe choices showing she was unable to personally care for I.K., whom she left in Rosa's care, someone she met at the bus station. During her year of voluntary maintenance services, mother was offered help with parenting, housing and domestic violence issues, but, other than completing a parenting class, she failed to take advantage of the rest.

Throughout the year, mother stayed committed to father, despite domestic violence between the two and despite the fact he was a sex offender registrant. It was father's requirement of registration that consistently limited mother's housing options. When mother, who lived in motels and homeless shelters, finally obtained much awaited housing in November of 2014, she moved out four weeks later because father could not stay there with her and mother said she needed father's help in caring for I.K. She chose to go back to an uncertain and temporary living arrangement and again use Rosa to help care for I.K. Mother consistently decided to choose a transient lifestyle with an abusive sex offender over having safe and suitable housing and providing care for I.K.

At disposition, mother acknowledged that, while she was no longer with father, she was not certain she would be able to care for I.K., but had a vague plan of taking her

to live with her at the homeless shelter. Mother was also by this time in a relationship with another sex offender registrant. While mother claimed she would not stay with her current boyfriend if I.K. was returned to her, she had not yet broken off her relationship with him, someone she said was her sole support system.

Mother acknowledged she consented to guardianship for I.K. because of her own instability, homelessness, and inability to care for I.K. When asked what had changed between the time when she agreed to the guardianship and her current request for custody of I.K., mother replied, "Not a lot. I mean, my situation is still kind of the same."

This evidence constitutes substantial evidence supporting the juvenile court's finding by clear and convincing evidence that placing I.K. with mother would be detrimental to I.K.'s safety, protection, or physical or emotional well-being.

II. FAILURE TO GRANT MOTHER REUNIFICATION SERVICES

Mother next contends that the juvenile court erred when it relied on section 361.5, subdivision (a) in denying her reunification services. We disagree.

Applicable Law and Analysis

Mother's argument involves an issue of statutory interpretation, which we review de novo. (*In re Joshua A.* (2015) 239 Cal.App.4th 208, 214-215.)

> "In ascertaining legislative intent, we look first to the words of the statute, giving effect to their plain meaning. [Citation.] If the statutory language is clear and unambiguous, we presume the Legislature meant what it said and the plain meaning of the statute governs. [Citation.] We construe the language in the context of the statute as a whole and the overall statutory scheme, and give significance to every word, phrase, sentence and part of an act in pursuing the legislative purpose." (*Ibid.*)

Section 361.5, subdivision (a) provides that, unless certain exceptions apply, "whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians." "The remaining provisions of section 361.5 set out 'who is *entitled to receive* mandatory reunification services, who

may receive reunification services, the circumstances under which the court *may deny* reunification services to someone otherwise entitled to receive them, and those circumstances under which the court *must deny* reunification services.'" (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19.)

Focusing on the second clause in section 361.5, subdivision (a), the agency and mother disagree on whether the juvenile court was required to grant reunification services to both Rosa *and* mother based on their differing interpretation of whether the Legislature's use of the disjunctive "or" in the phrase "the child's mother and statutorily presumed father *or* guardians" was meant to be inclusive or exclusive. (§ 361.5, subd. (a), italics added.) However:

> "Courts do not rely too heavily upon characterizations such as 'disjunctive' or 'conjunctive' forms to resolve difficult issues, but look to all parts of a statute. Courts construe all parts of a statute together, without according undue importance to a single or isolated portion." (2A Sutherland on Statutory Construction (7th ed. 2016) § 46:5, fns. omitted; see *Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132, 1135 ["We must not view isolated language out of context, but instead interpret the statute as a whole, so as to make sense of the entire statutory scheme"], superseded by statute on other grounds as stated in *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 470.)

Reading the second clause of section 361.5, subdivision (a) in context with the relevant language in the first clause, it is clear, based on the plain language of the statute and its grammatical structure, that the question of which party is entitled to reunification services depends on which of the two scenarios described in the first clause is applicable. Thus, if the child is removed from a parent, the statute requires reunification services to be provided to the child and the child's mother and presumed father, but if the child is removed from a guardian, the statute requires reunification services be provided to the child and the child's guardian.

Our construction of the language of section 361.5, subdivision (a) is supported by *B.L., supra*, 204 Cal.App.4th 1111, relied on by the agency. In *B.L.*, the Court of Appeal concluded that, despite its erroneous reliance on a subdivision of section 361.5 not at

issue here, the juvenile court nonetheless correctly concluded that the parents were not eligible for reunification services under section 361.5 because the child was not removed from his parents' custody but from the custody of his guardian grandparents and, therefore, only the grandparents were entitled to reunification services under the plain language of section 361.5, subdivision (a). As explained in *B.L.*:

> "… Section 361.5 authorizes reunification services for parents or guardians *when a child is removed from their custody* pursuant to section 361. (§ 361.5, subd. (a).) As explained below, [the child] was not removed from the parents' custody because the paternal grandparents, not the parents, had custody of [the child], pursuant to the guardianship ordered at the conclusion of the first dependency proceeding. Thus, only the paternal grandparents, as [the child's] legal guardians, and not the parents, were entitled to receive reunification services pursuant to section 361.5.
>
> "Section 361 addresses a child's removal 'from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated.' (§ 361, subd. (c).) 'For all practical purposes, when a dependent child is ordered removed from parental custody under section 361,' the Agency gains both legal and physical custody of the child. [Citations.] Thus, although the statute speaks in terms of a child removed 'from the physical custody of his or her parents or guardian or guardians,' (§ 361, subd. (c)) '[t]here can be no removal of custody from a parent who does not have custody in the first place' [citations]. As stated, the paternal grandparents, not the parents, had legal custody of [the child]." (*B.L.*, *supra*, 204 Cal.App.4th at pp. 1116-1117.)

The same reasoning applies here. I.K. was not removed from the custody of a parent but was ordered removed from Rosa's custody under section 361, subdivision (c)(1). Thus, the second scenario set forth in the first clause of section 361.5, subdivision (a) was present in this case (i.e., removal from the custody of a guardian) and therefore only Rosa, who had custody of I.K. as her legal guardian, was entitled to the reunification services prescribed in the second clause of the statute.

Mother contends the reasoning of *B.L.* is inapplicable because Rosa had a probate guardianship and not a dependency guardianship, as was the guardianship in *B.L.* We disagree. The language of section 361.5, subdivision (a) does not specify that it only

applies to dependency guardianships. In fact, there is case law holding the opposite. (See *In re Carlos E.* (2005) 129 Cal.App.4th 1408, 1420 [references to "guardians" in § 361.5, subd. (a), and elsewhere in dependency statutes refer to guardianships created through Probate Code rather than by juvenile court]; see also *In re Carrie W.* (2003) 110 Cal.App.4th 746, 758 [same].)

I.K. was removed from the custody of Rosa, her guardian, not from the custody of a parent. We are aware of no decisions holding that noncustodial parents are entitled to reunification services under section 361.5 in cases where a child is removed from the custody of a guardian. We reject mother's argument to the contrary.

III. TERMINATION OF GUARDIANSHIP

Mother argues that the juvenile court erred when it denied her petition for termination of guardianship because she lacked standing to do so. Mother also argues that, if we agree she lacked standing, the juvenile court should have, on its own motion, directed a hearing on the termination of the guardianship due to fraud and undue influence. As we explain below, we find no merit to mother's arguments.

Applicable Statutory Law

In order to understand and address mother's arguments, we first set out the procedure for terminating a probate guardianship in a dependency proceeding.

Rosa had custody of I.K. pursuant to a guardianship established under the Probate Code prior to the dependency proceeding. Probate Code section 1601 states that a guardianship of a person may be terminated "[u]pon petition of the guardian, a parent, [or] the … ward, … if the court determines that it is in the ward's best interest to terminate the guardianship…."

However, the procedure for terminating a probate guardianship *in a dependency proceeding* is set forth in section 728 and California Rules of Court, rule 5.620(e). (*In re Angel S.* (2007) 156 Cal.App.4th 1202, 1206-1208.) Section 728 provides, in pertinent part:

> "(a) The juvenile court may terminate or modify a guardianship of the person of a minor previously established under the Probate Code, … if the minor is the subject of a petition filed under Section 300, 601, or 602. If the probation officer supervising the minor provides information to the court regarding the minor's present circumstances and makes a recommendation to the court regarding a motion to terminate … a guardianship established in any county under the Probate Code, … of the person of a minor who is before the juvenile court under a petition filed under Section 300, 601, or 602, the court shall order the appropriate county department, or the district attorney or county counsel, to file the recommended motion. The motion may also be made by the guardian or the minor's attorney. The hearing on the motion may be held simultaneously with any regularly scheduled hearing held in proceedings to declare the minor a dependent child or ward of the court, or at any subsequent hearing concerning the dependent child or ward. Notice requirements of Section 294 shall apply to the proceedings in juvenile court under this subdivision."

Where, as here, there is a probate guardianship, the process specified in section 728 must be followed in order to modify or terminate that guardianship in a subsequent dependency proceeding. (*In re Angel S., supra,* 156 Cal.App.4th at p. 1207.)

Motion to Terminate Guardianship

Mother first contends the juvenile court erred when it denied her "petition for termination of the guardianship" on grounds that she did not have standing to bring it. However, we do not reach the merits of mother's argument as no such petition was ever filed or ruled on.

A. Procedural Background

On November 12, 2015, mother's counsel filed a motion to terminate guardianship on a simple "Motion for Order" form, without points and authorities. The juvenile court denied the motion without prejudice and explained on the motion form: "Simple motion is not the correct procedure for a W&I 728 motion. Court also questions whether mother may bring such a motion."

A week later, at the contested jurisdiction/disposition hearing on November 19, 2015, mother's counsel stated he wished to "place something on the record," and indicated he attempted to file a "petition for termination of guardianship using the GC255

form, as well as the GC260 form,[6] [¶] [but] [t]he clerk's office would not file it. They returned it. They said this wasn't the proper form, and they instructed me to use the simple form to file the motion." But, as counsel explained, when he earlier filed the motion (on Nov. 12, 2015) on the simple form, the juvenile court denied it. The juvenile court interjected that the motion was denied without prejudice. Counsel stated he understood, but that

> "the reason why I'm bringing this up and not making a big complaint about it, if I had filed it, I think right now I would be withdrawing the motion anyways. Partially because it is not going to affect the way that I'm going to proceed at hearing today. I do plan—depending on how this works out today, I may file it again in the future, but I did want the Court to be aware of that problem I had."

The juvenile court noted it still believed the simple motion form counsel originally used was not the appropriate form for a motion under section 728. As for the refusal of the clerk's office to file the GC-255 and GC-260 forms, the juvenile court noted it was not the prerogative of the clerk's office to do so, and, in the future, counsel should ask that his motion be "filed on demand."

Mother's counsel again stated he was not "planning to use it as part of my argument for today's hearing," but "will reserve the right to re-bring the motion in the future if it comes to that point."

Deputy county counsel then stated she did not believe "such a motion" could be brought by mother. The juvenile court reiterated that it understood, and

> "when I denied it without prejudice, I didn't really use the terminology that I should of [*sic*]. I really questioned whether the mother in this case really has standing, because when I read 728, it does not indicate a parent filing such a motion; so I really have some concern about whether a parent has standing to file such a motion. But that could be addressed at a later day … that was my concern. But I realized after the fact that I just said, 'The Court questions whether mother should bring such a motion,' and I should

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[6] See footnote 4, *ante.*

have said, 'The Court questions whether mother has standing to bring such a motion.'"

The juvenile court then went on to make its jurisdiction and disposition findings.

B. Applicable Law and Analysis

Despite mother's claim to the contrary, the juvenile court did not make a ruling that mother did not have standing to bring a motion for termination of the guardianship. The juvenile court merely voiced its concern whether that was the case, which it said could be addressed at another time. Mother's original motion was denied without prejudice, mother filed no subsequent motion, and the juvenile court issued no substantive ruling on any such motion. Therefore, the issue is not ripe for review.

Section 395 provides that an appeal may be taken from a final order of the juvenile court. An order of disposition pursuant to section 361.5 is generally considered a final order. As such, issues of declaring I.K. to be a dependent of the juvenile court, removal, and granting or denying reunification services to a parent are all orders made at the disposition hearing and immediately appealable pursuant to section 395. However, there was no order either granting or denying a motion to terminate the guardianship as no such motion was ever filed. There is therefore no final order to appeal from.

In addition, the question of whether mother has standing to bring a motion to terminate the guardianship is not ripe for review. "[T]he 'ripeness requirement' … 'prevents courts from issuing purely advisory opinions, or considering a hypothetical state of facts in order to give general guidance rather than to resolve a specific legal dispute' [citation] …." (*In re Joshua S.* (2007) 41 Cal.4th 261, 273.) We decline to issue such an opinion here.

***Sua Sponte* Motion by the Juvenile Court**

Mother also contends, "If this Court finds that the mother lacked standing under section 728 to file for the termination of the guardianship, the [juvenile] court should have directed the [agency] to file the motion to terminate the guardianship" because the guardianship "was unenforceable due to fraud and unclean hands." Mother's argument is

based on Rosa's drug issues, which predated the guardianship, as well as what she claims was undue influence by the social worker in getting mother to agree to the guardianship. Mother contends section 728 "unequivocally" allows that the juvenile court to terminate a guardianship previously established by the Probate Code.

We first note that we make no finding as to whether mother had standing to file for termination of the guardianship as that issue is not before us. Because we make no such finding, it begs the question as to whether we need to address mother's alternative argument at all.

In any event, while we agree section 728 gives the juvenile court the power to terminate a Probate Code guardianship, the section 728 procedure "contemplates two steps. [Citations.] First, the probation officer or social worker makes a recommendation to the court to terminate the probate guardianship. [Citations.] … Upon receiving the recommendation, the court must order the appropriate agency or county counsel to file a motion pursuant to section 728. [Citations.] … Once the motion … is before the juvenile court, the juvenile court then makes a determination whether to enter an order terminating the probate guardianship." (*In re Angel S., supra,* 156 Cal.App.4th at p. 1207.) Under the plain language of section 728, the guardian or the minor's attorney may also make such a motion without first obtaining an order from the juvenile court to do so. (§ 728; *A.H. v. Superior Court* (2013) 219 Cal.App.4th 1379, 1386.) The statute is silent on whether the juvenile court has the authority to order a motion to terminate guardianship be filed on its own motion, and mother provides no such authority to support her proposition.

Even if we assume without deciding that the juvenile court had the authority to order the agency to file a section 728 motion due to fraud and undue influence, it is not likely it would have done so. The juvenile court directly addressed counsel's argument that the guardianship was not enforceable due to fraud and unclean hands, stating:

> "You know, I think you need to move past that because, I am sorry, but I have a real problem with that argument.… [¶] If you want to exercise some

> other vehicle to attack that, then that's your prerogative, but I don't see at this point where you have any basis to attack the guardianship or claim unclean hands."

Nor can it be said that the juvenile court abused its discretion in failing to order the agency to file a section 728 motion. When terminating a guardianship under section 728, it is the best interest of the child *only* that governs whether the juvenile court should terminate a probate guardianship. The standard of review applicable to a juvenile court's finding that termination of a predependency probate guardianship is in the best interests of the minor is clear error or abuse of discretion. (*Guardianship of L.V.* (2006) 136 Cal.App.4th 481, 489.) It is therefore logical that we employ the abuse of discretion standard in determining whether the juvenile court erred when it failed to order the agency to file a section 728 motion to terminate guardianship without a recommendation from the social worker.

While there was evidence that Rosa's drug use began before the guardianship was approved, there was no evidence before the juvenile court of any fraud on Rosa's part in obtaining the guardianship. Mother produced no documents to support her claim. Instead, the evidence before the juvenile court was that the agency was not recommending termination of the guardianship, but rather that I.K. reunify with Rosa because Rosa had been her primary caretaker for most of her life. While Rosa had a substance abuse issue, she had voluntarily checked herself into the hospital and asked for assistance, both for herself and I.K., when she realized she needed help. She made substantial strides in treating her substance abuse, completed a 60-day inpatient program, continued actively in treatment, and began counseling. Before treatment, Rosa had a history of employment, a stable home, and had raised three children, a base level of functioning she could aim to return to upon completing her substance abuse treatment. She had an extensive support system of family and friends.

Mother, on the other hand, had no history of employment and had been homeless for years by her own choice. When she did get permanent housing, she soon gave it up in

order to remain with father, who had anger management issues and was a convicted sex offender. Mother was offered repeated services, which she failed to take advantage of. By her own admission, she had not raised I.K.

Nor is there any evidence to support mother's insistence that she was forced into the guardianship. Mother's reliance on *In re Cheryl E.* (1984) 161 Cal.App.3d 587 is misplaced. In *In re Cheryl E.*, the mother was able to rescind a consent to adoption because the social worker induced her to sign the consent by telling her she had a year to rescind it. (*Id.* at p. 595.)

Here, mother testified that she consented to the guardianship at the time because it was in I.K.'s best interest. Nevertheless, mother claims she was "unduly" influenced by the social worker who "was making it sound to us as if we didn't do the guardianship and we kept living the way we did, and the baby didn't have a stable residence, that she could get taken from us." This, however, was not a threat, but a statement of fact, based on already having been provided a year of voluntary services. This statement, when placed in context, took place at the agency's offices on January 26, 2015, where mother and father, already having agreed to the guardianship, wished to rescind their consent because they claimed they were not allowed free access to I.K. Father became enraged and made threats to break I.K.'s legs and hurt mother. Staff at the agency heard these threats. Both mother and father were angry and yelling and demanded I.K. back in their care. The social worker participating in the meeting with mother and father told them that, due to their erratic behavior, I.K. would not be going home with them that day, and if they did not allow I.K. to stay with Rosa, who was going to pursue guardianship, an emergency response investigation would be immediately started. Mother's claim of "undue influence" by the social worker was a statement of two possible outcomes of the incident that had just occurred.

It was rational for the juvenile court to conclude that reunification with Rosa rather than mother was more likely in I.K.'s best interest and that the guardianship

continue. We find no error on the part of the juvenile court in failing to sua sponte order the agency to file a motion to terminate the guardianship.

DISPOSITION

The orders of the juvenile court are affirmed.

_____
FRANSON, J.

WE CONCUR:

_____
KANE, Acting P.J.

_____
POOCHIGIAN, J.